

UNAPPROVED AND SUBJECT TO CHANGE  
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION  
MINUTES OF MEETING, Public Session

December 11, 2003

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:50 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Phil Blair, Sheridan Downey and Thomas Knox were present.

**1. Public Comment.**

There was no public comment regarding items not on the agenda.

**Consent Calendar**

Chairman Randolph indicated that the agency received a communication regarding item #15 of the agenda, but it was not distributed to any of the Commissioners or the Chairman because it was an ex parte communication.

Commissioner Downey asked why enforcement item #19, involving more than \$50,000, was treated as a streamlined stipulation.

Enforcement Chief Steve Russo explained that contributions involving more than \$50,000 are not automatically treated through the streamlined program, but that they are not automatically kept out of the streamlined program either. In this particular case, staff found nothing extraordinary about it and staff did not think it needed to be treated outside the streamlined program. He noted that matters involving over \$100,000 are usually treated outside the streamlined program.

Commissioner Blair moved that the consent calendar be approved.

Commissioner Knox seconded the motion.

Commissioners Blair, Downey, Knox, and Chairman Randolph voted "aye." The motion carried by a vote of 4-0. The following items were approved:

**Item #2. Approval of the Minutes of the October 2, 2003, Commission Meeting.**

**Item #3. In the Matter of Agapito Fajardo, Friends of Pete Fajardo, and Natividad Odal, FPPC No. 97/046.** (18 counts.)

**Item #4. In the Matter of the Law Firm of Joseph M. Alioto, FPPC No. 02/782.**  
(1 count.)

- Item #5. In the Matter of California Pro-Life Council, Inc. PAC and James Mathwig, FPPC No. 01/182.** (8 counts.)
- Item #6. In the Matter of Lou Lopez, Lou Lopez for Supervisor and Sheri Schwabe, FPPC No. 02/909.** (7 counts.)
- Item #7. In the Matter of Donna Casey and Casey for Supervisor '98, FPPC No. 00/854.** (4 counts.)
- Item #8. In the Matter of Scott Cook, FPPC No. 01/235.** (4 counts.)
- Item #9. In the Matter of Elizabeth J. Cabraser, FPPC No. 03/383.** (3 counts.)
- Item #10. In the Matter of Ram Development, Inc., FPPC No. 03/467.** (2 counts.)
- Item #11. In the Matter of Richard T. Santulli, FPPC No. 03/497.** (2 counts.)
- Item #12. In the Matter of Daniel D. Villanueva, FPPC No. 03/495.** (2 counts.)
- Item #13. In the Matter of Beazer Homes USA, Inc., FPPC No. 03/496.** (2 counts.)
- Item #14. In the Matter of Riverside County Business & Property Owners Coalition and Daralyn Reed, FPPC No. 02/152.** (2 counts.)
- Item #15. In the Matter of Barbara Keyani, FPPC No. 03/032.** (2 counts.)
- Item #16. In the Matter of Thomas Campbell, FPPC No. 02/462.** (1 count.)
- Item #17. In the Matter of Jeff S. Coffman, FPPC No. 01/304.** (1 count.)
- Item #18. Failure to Timely File Major Donor Campaign Statements.**
- Item #a. In the Matter of Peter Morton, FPPC No. 2003-582.** (1 count.)
- Item #b. In the Matter of Basic Resources, Inc., FPPC No. 2003-567.** (1 count.)
- Item #c. In the Matter of Berger & Montague, P.C., FPPC No. 2003-568.** (1 count.)
- Item #d. In the Matter of Harvey Weinstein, FPPC No. 2003-588.** (1 count.)
- Item #e. In the Matter of Digital Campaigns, Inc., FPPC No. 2003-575.** (1 count.)
- Item #f. In the Matter of Recording Artists' Coalition, FPPC No. 2003-585.** (1 count.)
- Item #g. In the Matter of Delores Pistacchio, FPPC No. 2003-584.** (1 count.)
- Item #h. In the Matter of Marcus A. Moreno, FPPC No. 2003-581.** (1 count.)

- Item #i. In the Matter of New Images of Beverly Hills, FPPC No. 2003-583.**  
(1 count.)
- Item #j. In the Matter of Robert Lorsch, FPPC No. 2003-640.** (2 counts.)
- Item #k. In the Matter of Louise Gund, FPPC No. 2003-639.** (1 count.)
- Item #l. In the Matter of Hank Asher, FPPC No. 2003-566.** (1 count.)
- Item #m. In the Matter of Phoebus Consultants, LLC, FPPC No. 2003-641.** (1 count.)
- Item #n. In the Matter of Capitol Records, Inc./EMI Recorded Music, North America, FPPC No. 2003-571.** (1 count.)
- Item #o. In the Matter of Shehadev Properties, FPPC No. 2003-586.** (1 count.)
- Item #p. In the Matter of Harlan R. Crow, FPPC No. 2003-574.** (1 count.)

**Item #19. Failure to Timely File Major Donor Campaign Statements.**

- Item #a. In the Matter of John Paul Talty & Affiliated Entities, FPPC No. 2003-459.** (1 count.)

**Item #20. Amendment of Regulation 18427.1—Notification to Contributors of \$5,000 or More.**

Technical Assistance Division Chief Carla Wardlow presented proposed amendments to regulation 18427.1, dealing with notification to contributors of \$5,000 or more. She explained that the PRA requires candidates and committees that receive contributions of \$5,000 or more from a single contributor to notify the contributor that he or she may become a major donor under the PRA. She noted that the major donor qualification threshold is \$10,000, so this \$5,000 notification provides the contributor with notice that, if they have made or plan to make other contributions they may have reporting requirements.

Ms. Wardlow stated that a 1986 regulation specified the language of the notice. She noted that staff received a recommendation last year from Chip Nielsen, asking that the regulation be amended to clarify the language with regard to the reporting of late contributions. She explained that major donors must file 24-hour reports during the 16-day period just before an election. Mr. Nielsen believed that the 1986 language should be clarified to specify that the late contribution reports are required rather than may be required.

Ms. Wardlow stated that the proposed language of the regulation was in Appendix A of the staff memo. She explained that line 14 deleted the words, “may be” and added the word, “are” so that the language now reads, “You are required to file a late contribution report within 24 hours.” She explained that language was added to lines 15 through 18 to clarify the definition of “late contribution.”

Commissioner Blair asked why the original language was written, “may be,” if the requirement was mandatory.

Ms. Wardlow stated that contributions made outside of the late contribution period only had to be reported on the semi-annual reports, and she guessed that, since the language did not clearly state when the late contribution reporting period was required, the language was kept general.

Commissioner Blair expressed concern that the language was now being changed from optional language to mandatory language.

Ms. Wardlow stated that Mr. Nielsen expressed concern that the language about the late contribution reporting requirement might be overlooked because the regulation did not state that the major donor was required to file the report.

In response to a question, Ms. Wardlow stated that there had been no public opposition to the proposal. She pointed out that one letter was received from Chuck Bell, from Bell McAndrews, Hiltachk and Davidian, supporting the regulation and recommending that the Commission take further action to amend the PRA. She noted that staff had not yet talked about Mr. Bell's proposal, but supported the concept of eliminating duplicative reporting whenever possible.

In response to a question, General Counsel Luisa Menchaca noted that, while the agenda indicated this item was up for pre-notice discussion, the regulation was actually up for adoption. Although Bagley-Keene does not require the specificity, if there was objection the staff should bring the item up for adoption at a later time. Chairman Randolph indicated there was no need to bring it back.

Commissioner Blair moved adoption of the regulation.

Commissioner Knox seconded the motion.

Commissioners Blair, Downey, Knox and Chairman Randolph voted "aye." The motion carried by a vote of 4-0.

**Item #21. Adoption of Amendments to Regulation 18707.5 – Sources of Income to Owners of Retail Business Entities.**

Chairman Randolph asked the Commissioners if a presentation was necessary.

Having heard no request for presentation, Commissioner Downey moved adoption of Regulation 18707.5.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Knox and Chairman Randolph voted "aye." The motion carried by a vote of 4-0.

**Item #22. Conflict of Interest Codes – Placement of Positions / Classifications in Appropriate Disclosure Categories (Project A-5).**

Commission Counsel Scott Tocher explained that the SEI project began in 2002, and examined how SEI filers are identified and notified of their filing obligations by their filing officers. This project deals with the system of notification and the guidelines and procedures agencies do use or should use. The task force conducted surveys to determine whether guidelines were necessary, and, if so, what form those guidelines or rules should take, and whether the guidelines would be mandatory or permissive. The project also explored the appropriate timelines between advising a filer of the filing obligations and initiating an enforcement action for failure to meet those obligations. Mr. Tocher explained that the staff memo outlined the results of staff's surveys identifying important variables and eliciting feedback.

Mr. Tocher reported that the results of the surveys show that guidelines are needed, and that filing officers would appreciate those guidelines. However, filing officers did not support mandatory guidelines because of workload issues and the fact that it is difficult to comply with timelines because the filing officers do not always get the information in a timely manner. Filing officers were also concerned about whether they would be held responsible and be subject to enforcement actions if there were mandatory guidelines. Mr. Tocher explained that smaller agencies were more likely to be able to comply with a 30-45 day timeline, but that larger agencies would find that timeline more difficult.

Mr. Tocher explained that the task force explored whether to pursue mandatory guidelines through legislation or regulations, or permissive guidelines through Commission advice and assistance. Staff did not reach consensus on the best approach. A legislative approach could be unpredictable, a regulatory approach may bring into question the Commission's authority to impose certain obligations on filing officers, and guideline approaches have no enforcement mechanism. Staff recommended pursuing one of the approaches, however.

Commissioner Downey favored the concept of a regulation, noting enforcement cases often involved respondents claiming that their filing officer did not inform them of their filing obligations. He noted that one of the purposes of the Commission was to promote compliance with the PRA, and therefore the Commission should try to ensure that people know about their filing obligations. He understood why filing officers preferred guidelines, noting that they would not be subject to enforcement actions if the rules were in the form of guidelines.

Commissioner Downey stated that, under the PRA, a filing officer would have to supply forms to the filer prior to the filing deadline, supplying a tacit timeline for a regulation. He noted that a regulation could be drafted providing accommodations for smaller or larger agencies. He was not adverse to imposing a stronger duty on filing officers to get procedures in place that would identify who needs to file. He believed that an escape clause could be built into the regulation protecting the filing officer when outside circumstances prevent the filing officer from learning about a new filer.

In response to a question, Enforcement Chief Steve Russo stated that a statutory approach was better because there may be an argument to challenge a regulation based on the question of whether the Commission had the authority to adopt the regulation. If a statutory approach is taken, that argument could not be made. He noted that a legislative action would illustrate the importance of filing SEI's. He did not believe a statutory approach was necessary, but thought it would be helpful.

Commissioner Downey noted that a legislative approach would be great if the Legislature did everything the FPPC wanted. However, that result is far from certain with a legislative approach.

Chairman Randolph preferred a guideline approach, because a regulatory action could become a one-size-fits-all mandate that would not be appropriate for everyone. She noted that filing officers may not have the resources or the intra-agency cooperation to comply with the regulation. She preferred to give filing officers guidance to do their job.

Commissioner Knox pointed out that a filing officer who failed to comply with the guidelines could not be sanctioned with a guideline approach. He noted that the FPPC is the filing officer for 22,000 officials, and under a regulation, the FPPC would have to notify 22,000 officials.

Technical Assistance Division Chief Carla noted that staff works with local filing officers to deal with these types of issues, and that most filing officers do a good job. It currently takes staff months to log 22,000 statements, and lists of non-filers are generated from those logs. She noted that staff gets about 13,000 statements around the April 1 deadline each year, and the rest come in during the year.

In response to a question, Ms. Wardlow stated that staff sends notices to local agencies who forward SEI's to the FPPC. She noted that no one files directly with the FPPC.

In response to a question, Ms. Wardlow stated that the FPPC is the filing officer who supplies the forms under § 81010(a). Local filing officers often serve as an intermediary filing official, accepting the SEI's, keeping a copy for their records and forwarding the original to the FPPC. Often, city clerks also retain certain statements for designated employees under the city's conflict of interest code. Currently, the FPPC provides the forms by putting the forms on the web site. Staff is working on a process to notify local officials when the forms are available on the web site. Staff used to mail 100,000 hard copies.

Commissioner Downey noted that the real problem is new filers or filers who have changed their filing status. He stated that the Commission did not want to punish filing officers when they did not know and could not have known of a filing officer issue.

Ms. Wardlow stated that staff was contacting agencies to make their filing records up-to-date.

Chairman Randolph observed that local filing officers have the same problem—they depend on personnel officials to let them know about new filers or changes with current filers. She stated that the FPPC budget issues have greatly curtailed filing officer outreach programs, noting that it would be wrong to impose a new mandate on filing officers while, at the same time, cutting back on outreach efforts.

Ms. Wardlow agreed, noting that 2 positions have been lost in Technical Assistance Division that did filing officer functions and filing officer outreach. Additionally, staff can no longer travel to train because of budget cutbacks.

In response to a question, Mr. Tocher stated that guidelines would have to consider the size of the agency, and provide a step-by-step guide and timeline for filing by new filers.

In response to a question, Ms. Wardlow stated that filing officers have been referred to enforcement staff when they have failed to fulfill their duties. This generally happens only after numerous requests for statements from the filing officer and promises from the filing officer that the statements will be sent, but those statements are never received.

Commissioner Knox observed that using the guideline approach would send the message that filing officers would not be held accountable for failing to tell filers of their filing obligation. He did not want to see the guidelines turn into some kind of regulation when dealing with those cases.

Chairman Randolph stated that a filing officer who made no effort to meet their obligation to provide forms and notify filers of their filing obligations could be dealt with by an enforcement action under § 81010.

Commissioner Blair suggested that the guidelines could be tried before resorting to regulations.

Chairman Randolph agreed.

Commissioner Downey stated that there seemed to be a consensus that filing officers should be advised that they need to do more than mechanically hand a form to a filer, and that the forms should be accompanied with a reminder of the filing obligations.

Commissioner Knox stated that it did not seem fair to hold a filing officer accountable for notifying potential filers, and the issue could not be resolved statutorily unless every government agency makes the filing officer a focal point for information.

Ms. Wardlow stated that campaign filing officers also have obligations under § 81010, and the Secretary of State's office would have to notify 100,000 filers of their filing obligations six times a year if a mandatory or regulatory approach is taken. Notification to filers prior to a filing deadline would have a huge workload impact.

Commissioner Downey suggested that regulations or guidelines would have to exclude the Secretary of State's office.

Mr. Tocher stated that filing officers seem to want to know how to do their jobs right, and guidelines sanctioned by the Commission would help filing officers, providing more weight than if the filing officer provided advice on their own. Mr. Tocher suggested that guidelines may take care of a lot of problems. He believed that an obstreperous filing officer could still be dealt with through the statute.

Commissioner Blair moved that the Commission try the guideline approach and review it a year after they are implemented to see how well it works.

Chairman Randolph noted that it would take awhile to develop the guidelines.

Commissioner Knox seconded the motion.

Commissioners Blair, Downey, Knox and Chairman Randolph voted "aye." The motion carried by a vote of 4-0.

Chairman Randolph noted that the staff memo indicated that guidelines could be prepared and staff would get back to the Commission late next year.

**Item #23. Regulatory Calendar for 2004 and Proposition 34 Retrospective—  
Proposed Regulatory Refinements.**

Assistant General Counsel John Wallace stated that staff had concerns about the number of items on next year's regulatory calendar, noting staff reductions and possible further staff reductions, plus existing workload demands involving advice letters and litigation, that will make it difficult to work on all of the proposed regulatory projects. Therefore, staff suggested that some items be deferred for the future.

Mr. Wallace presented the proposed calendar, noting that staff proposed pushing the Interested Persons meetings for the General Plan and 1090 clusters to January 13, 2004. This will push the 1090 Commission discussion back 1 month, but the General Plan cluster will remain as calendared.

Mr. Wallace stated that staff was requesting calendar changes concerning the Proposition 34 items in appendix 2 of the staff memo. He requested that the emergency regulation interpreting § 85310 set for a January 2004 hearing, with a permanent adoption scheduled for October 2004, be moved. Mr. Wallace stated that staff would present an "issues" memo in January, a prenotice hearing in April, and suggested that it be adopted in June. Additionally, he suggested that the recall election item #4 be considered at the same time that the Commission considers § 85310 regulations, in April and June.

Chairman Randolph noted that § 85316 regulations would still be considered in January.



Mr. Wallace agreed.

Commission Counsel Scott Tocher stated that staff conducted an overview of the Proposition 34 regulations and advice rendered, identifying issues that may need to be addressed. He explained that the recall election and subsequent litigation brought some issues to the forefront, and that staff identified several projects as high priority items.

Mr. Tocher stated that issues revolving around § 85310, regarding communications identifying state candidates, arose during the recall election. He noted that public comment has suggested that § 85310 should operate to create a contribution to a candidate's ballot measure committee when the candidate appears in communications during an election. Staff proposed that the Commission consider this issue at the January meeting, with an action scheduled for April.

Mr. Tocher suggested that regulations interpreting § 85316, regarding post-election fundraising and limiting § 85316 to committees created for post Prop. 34 elections, be revisited. Staff proposed that it be brought back for emergency adoption in January.

In response to a question, Mr. Tocher stated that this was a regulation, dealing with putting money into an old committee, that the court struck down.

Chairman Randolph observed that § 85310 would be moved to April and would be discussed in conjunction with the question in item #4.

Mr. Tocher stated that regulations regarding termination of committees, which were created by the Commission to accommodate the Commission's prior decision regarding post-election fundraising, may need to be adjusted.

Mr. Tocher stated that an ongoing project dealing with affiliated entities could be addressed and completed in 2004.

Mr. Wallace stated that staff requested specific items be removed from the calendar. He suggested removing consideration of Regulation 18425 (dealing with Late Contribution Reports), Amendment to Regulation 18116 (dealing with filing dates), and regulations excluding appointments and unique financial effects from the Governmental Salary Exception. He noted that the latter could be put back on the calendar should time become available.

Mr. Wallace recommended that the Commission choose between consideration of the gift ticket cluster, which tends to be very time consuming, or consideration of both the Confidentiality of Enforcement cases and the Precedential Decisions in Enforcement Actions issues.

In response to a question, Mr. Wallace stated that the gift ticket issues seem to arise frequently.

Chairman Randolph stated that she preferred to consider the gift ticket cluster. She suggested that the Commission approve the regulation with the changes specified by staff. Emergency consideration of § 85316 would be in January. The Commission would choose to consider the gift ticket cluster and not the two enforcement regulations, and those items recommended for removal would be removed.

Mr. Wallace noted that the calendar could be revised in March.

Commissioner Downey moved that the calendar be adopted as recommended by staff.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Knox and Chairman Randolph voted “aye”. The motion carried by a vote of 4-0.

**Item #24. Approval of 2003/04 Statement of Economic Interests (Form 700) and the Form 700 Certification.**

Ms. Wardlow requested approval of the forms, noting that they would be used by filers next year. She explained that there were very few changes in the laws and that the proposed changes to the forms offered clarification.

Commissioner Downey moved that the Form 700 and the Form 700 certification be approved.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Knox and Chairman Randolph voted “aye.” The motion carried by a vote of 4-0.

**Item #25. Legislation Report.**

Executive Director Mark Krausse reported that there was no additional information to add to the staff report. The report was accepted as submitted.

**Item #26. Executive Director’s Report**

Executive Director Mark Krausse reported that there was no additional information to add to the staff report. The report was accepted as submitted.

**Item #27. Litigation Report**

General Counsel Luisa Menchaca reported that staff represented the Commission in *Walters v. Secretary of State and the FPPC as Real Party in Interest* and *Evans v. Secretary of State and the FPPC as Real Party in Interest*. Both emergency writ matters were filed in Sacramento Superior Court to request that two Assembly candidates amend

their form 501 to accept the voluntary expenditure limits when they had initially declined them. She observed that staff was involved in litigation relating to the same issues during the recall also. She noted that the candidates claimed that they made a mistake when they rejected the limits, and the court ruled in their favor. The Commission appealed the emergency writ, and the court of appeal denied the appeal without comment. Ms. Menchaca stated that once there is an entry of the order of the judgment, staff will consider whether to recommend that the Commission file an ordinary appeal.

Ms. Menchaca reported that the U.S. Supreme Court upheld most of the federal statutes of the Bipartisan Campaign Reform Act of 2002 in *McConnell v. Federal Election Commission*. Staff expects to be analyzing the opinion to learn how it may affect the PRA.

The meeting adjourned to closed session at 10:50 a.m.

The meeting reconvened in open session at 1:02 p.m.

Chairman Randolph stated that no reportable action was taken during the closed session meeting.

The open session adjourned at 1:02 p.m.

Dated: January 14, 2004.

Respectfully submitted,

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Sandra A. Johnson  
Executive Secretary

Approved by:

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Chairman Randolph